

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE: NINE WEST LBO SECURITIES :  
LITIGATION :  
Pertains to All Associated Actions :  
: 20 MD. 2941 (JSR)  
: ORDER  
:  
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JED S. RAKOFF, U.S.D.J.

Familiarity with the general background to this case is here assumed. See generally In re Nine West LBO Sec. Litig., --- F. Supp. 3d ---, 2020 WL 5049621 (S.D.N.Y. Aug. 27, 2020). Now before the Court are two motions to dismiss plaintiffs' remaining claims. First, the director defendants<sup>1</sup> move to dismiss the Litigation Trustee's claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and violations of 15 Pa. Cons. Stat. §§ 1551 and 1553. Dkt. No. 325. Second, the officer defendants<sup>2</sup> move to dismiss: (1) the Litigation Trustee's

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<sup>1</sup> The director defendants are Gerald C. Crotty, Robert L. Mettler, Mary Margaret Hastings Georgiadis, Ann Marie C. Wilkins, Sidney Kimmel, John D. Demsey, Matthew H. Kamens, James A. Mitarotonda, Jeffrey D. Nuechterlein, Lowell W. Robinson, Robert & Susan Mettler Family Trust U/A 3/27/06, Robert L. Mettler, Susan T. Mettler, Trustees, Telendos, LLC, and The Sidney Kimmel Revocable Indenture of Trust. This group also includes Wesley R. Card, who served as both an officer and director.

<sup>2</sup> The officer defendants are Christopher R. Cade, Wesley R. Card, Ira M. Dansky, Joseph T. Donnalley, Richard L. Dickson, Cynthia DiPietrantonio, Tami Fersko, John T. McClain, and Aida Tejero-DeColli.

claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and unjust enrichment; and, along with certain other defendants who joined in this motion,<sup>3</sup> (2) the Litigation Trustee's and the Indenture Trustee's fraudulent conveyance claims in connection with the change in control payments. Dkt. No. 322.

Upon consideration, the motions are granted in part and denied in part. Specifically, the Court grants the director defendants' motion to dismiss the claims arising under 15 Pa. Cons. Stat. §§ 1551 and 1553; but the Court denies their motion to dismiss the claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty. Next, the Court grants the officer defendants' motion to dismiss the claims for breach of fiduciary duty claims, aiding and abetting breach of fiduciary duty, and unjust enrichment; but the Court denies their motion to dismiss the fraudulent conveyance claims, except as to Donnalley and Tejero-DeColli as to whom the Litigation Trustee's -- but not the Indenture Trustee's -- fraudulent conveyance claims are dismissed. Finally, the Court grants

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<sup>3</sup> Defendant Janet Carr joined in the officer defendants' motion to dismiss the fraudulent conveyance claims. Dkt. No. 328. The employee defendants -- namely, Jeffrey Brisman, Lynne Bernstock, Scott Bowman, Gregory Clark, John Deem, Beth B. Dorfsman, Arundhati Kulkarni, Joseph Rosato, Larissa Sygida, and Norman Veit -- joined in that motion as well. Dkt. No. 332.

Carr's and the employee defendants' motions to dismiss the intentional fraudulent conveyance claims; but the Court denies their motions to dismiss the constructive fraudulent conveyance claims.<sup>4</sup> A memorandum explaining the reasons for these rulings will issue in due course.

Lastly, although the Court originally intended to set a schedule for deposition discovery and summary judgment motion practice in this Order, see Dkt No. 20 at 3, in light of the greater knowledge that the parties have of what will be necessary in that regard, the parties are invited to jointly or severally submit their own proposal, provided they do so by no later than Friday, November 6, 2020 at 5:00 p.m.

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<sup>4</sup> In particular, the Court dismisses the following claims. In the amended complaint in 20-cv-4262, Dkt. No. 110, Counts I and II are dismissed as against McClain and Fersko, Counts III and IV are dismissed, and Count VII is dismissed with respect to the intentional fraudulent conveyance claims as against Brisman and Kulkarni. In the amended complaint in 20-cv-4265, Dkt. No. 53, Counts I, II, and III are dismissed. In the amended complaint in 20-cv-4287, Dkt. No. 130, Counts I and II are dismissed as against Donnalley, Counts III and IV are dismissed, and Count VII is dismissed (1) with respect to the Litigation Trustee's claims as against Donnalley and Tejero-DeColli and (2) with respect to the intentional fraudulent conveyance claims as against Clark, Carr, Rosato, Sygida, Bernstock, and Veit. In the complaint in 20-cv-4292, Dkt. No. 1, Counts III and IV are dismissed. In the complaint in 20-cv-4346, Dkt. No. 1, Counts III and IV are dismissed. In the amended complaint in 20-cv-4433, Dkt. No. 100, Count III is dismissed with respect to the intentional fraudulent conveyance claims. In the amended complaint in 20-cv-4436, Dkt. No. 134, Counts I and II are dismissed as against Dickson and Counts III and IV are dismissed.

The Clerk of the Court is directed to close docket entries 322, 325, and 328 in 20-md-2941.

SO ORDERED.

Dated: New York, NY  
November 3, 2020

  
JED S. RAKOFF, U.S.D.J.